

HCRC to Launch Appeals Database

New electronic resources from the Habeas Corpus Resource Center (HCRC) will give attorneys handling capital appeals quick access to a host of information and research that is certain to make their tough jobs much easier.

When fully operational early next year, the center's online Resource Assistance Database will include briefs from past cases, model briefings, court opinions, subject matter research files, and other useful information and research that can dramatically reduce investigative time and costs and expedite preparation and case presentation.

"To date, we've scanned 500,000 pages of briefs from the past 20 years," says Michael Laurence, executive director of the 18-month-old center, which the Legislature established to handle state and federal habeas corpus proceedings and provide training and support for private capital defense attorneys. "Our

goal is to go online with as much helpful information as possible so that attorneys will no longer have to reinvent the wheel with every new case."

TRAINING AND RECRUITING

The center's mission is to provide experienced capital litigators for people on death row. The State Public Defender's Office is the only other state agency that takes appointments in capital cases from the California Supreme Court.

In its first year of operation, the center has focused heavily on recruitment and training. It sponsored two training conferences this year to recruit attorneys experienced in postconviction defense to help reduce the state's backlog of death penalty cases. The conferences, held in May and September, drew a combined 450 attorneys. "We were encouraged by this turnout," Mr. Laurence notes.

The conferences were designed to address attorneys' reluctance to take capital cases, expressed in previous surveys. The reasons cited most were the high financial cost of case preparation and unfamiliarity with habeas corpus procedure and practice. The May conference focused on habeas corpus practice and procedure, and the September conference brought in experts to discuss mental health issues that often appear in capital and other criminal law cases. The center is seeking funding for a third and more intensive week-long training on habeas corpus procedure.

In addition to recruiting and training, HCRC's 24 staff attorneys, including Mr. Laurence, are

busy handling capital appeals.

LAWYER SHORTAGE STILL CRITICAL

California has significant delays in finding attorneys to accept appointments in capital cases. More than 160 of the nearly 600 inmates on death row are without counsel. The shortage of qualified attorneys is the main cause of these delays.

"Until we eliminate the state's backlog of cases, we are committed to finding and recruiting attorneys to accept appointments," Mr. Laurence says. "I urge all of our state's criminal defense attorneys to help us recruit their colleagues to this very important work." ■



Michael Laurence, Executive Director of the Habeas Corpus Resource Center, with some of the 500,000 pages of briefs now available on the center's online Resource Assistance Database. Photo: Jason Doiy

Ethics Program

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The Qualifying Ethics Planning Committee, which had its first meeting on March 24 of this year, developed the curriculum for the training sessions based on the Code of Judicial Ethics. The planning committee designed the program around the issues, both on and off the bench, that most often come before the CJP. In addition to creating the curriculum, the committee selected the faculty for the classes.

"It was important to have faculty who had experience in the ethics community," says Judge Julie Conger, Superior Court of Alameda County, who chairs the planning committee. "All of the judges on the faculty are members or former members of the California Judges Association's Ethics Committee or have extensive experience in teaching judicial ethics."

During the course of the one-day program, faculty cover such specific issues as disqualification and disclosure, ex parte communications, disciplinary duties, and abuse of authority. The training uses videos to illustrate certain curricula with specific examples. Two- to three-minute vignettes highlight inappropriate behavior, showing, for example, scenarios of cultural insensitivity and bias.

In addition to the ethics training, the classes present an overview of current employment law that may come into play during a judicial officer's bench activity. This segment, taught by attorneys from the AOC's Office of the General Counsel and other employment law experts, offers a refresher course on topics such as the Americans with Disabilities Act, sexual harassment, union issues, and disparate treatment.

"Even though the training is a prerequisite for receiving insurance coverage, it ultimately protects the public and the legal profession," adds Judge Conger. "The training covers the topics that give the public and the CJP the most concern. So far they

have been extremely successful."

The first round of training sessions, which corresponds with the three-year insurance coverage that began on September 15, 1999, is being offered through December 31, 2002. The educational programs will be offered to all judicial officers several times a year. In the future, training organizers are looking to provide the classes via the Internet.

● For more information or to receive a schedule of classes, contact Roderic Cathcart, Administrative Office of the Courts, Education Division, 415-865-7834, e-mail: rod.cathcart@jud.ca.gov. ■

Qualifying Ethics Planning Committee

Judge Julie M. Conger,
Chair
Superior Court of Alameda County

Commissioner Robert L. Broughton
Superior Court of Contra Costa County

Judge J. Stephen Czuleger
Superior Court of Los Angeles County

Judge Michael Garcia
Superior Court of Sacramento County

Judge Philip S. Gutierrez
Superior Court of Los Angeles County

Judge Ken Kawaichi
Superior Court of Alameda County

Judge Judith McConnell
Superior Court of San Diego County

Liaison Member
Judge B. Tam Nomoto
Schumann
Superior Court of Orange County

Governor Signs DNA Testing Legislation

In September, Governor Gray Davis signed Senate Bill 1342, which gives imprisoned felons the opportunity to request DNA testing in a motion for a new trial. The felon must specify, among other things, how the requested DNA testing would raise a reasonable probability that the verdict or sentence would have been more favorable to the convicted person if the results of DNA testing had been available at the time of conviction. Unless unavailable, the judge who conducted the defendant's trial must hear the motion and may at the discretion of the court deny the motion without a hearing.

In a statement released from his office, California Attorney General Bill Lockyer said, "The new law provides an important framework by which in-

nocent persons who have been wrongly convicted may use new scientific techniques to prove their innocence, while preventing the guilty from manipulating procedures to delay or thwart the administration of justice."

The new law, sponsored by Senate President Pro Tem John Burton, specifies eight findings that must be made before DNA testing is ordered, including the reasonable probability that, in light of all the evidence, whether admitted at trial or not, the convicted person's verdict or sentence would have been more favorable if DNA testing results had been available at the time of conviction.

● For more information about SB 1342, visit the California Legislature's Web site at www.leginfo.ca.gov. ■

following additional languages in the Court Interpreter Certification Program: Armenian, Cambodian, Mandarin, Russian, and Punjabi.

3. Delegated authority to the Administrative Director of the Courts to designate additional languages for inclusion in the Court Interpreter Certification Program.

● For more information, visit the Court Interpreters Web site at www.courtinfo.ca.gov/programs/courtinterpreters, or contact Penny Davis, 415-865-7598, e-mail: penny.davis@jud.ca.gov. ■

Interpreter Study

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Based on the study, the Judicial Council at its October 27 meeting approved recommendations made by the AOC's Court Interpreters Program regarding the use of interpreter services. The council took the following actions:

1. Approved the *2000 Language Need and Interpreter Use Study* for submission to the Governor and Legislature.

2. Approved inclusion of the

Q&A

Pro Pers' Advocate

*Conversation With
Pauline Gee*



Pauline Gee

Pauline Gee has spent most of her legal career to date assisting low-income and pro per litigants and ensuring access to justice for the disenfranchised. It was why she became an attorney.

Ms. Gee began her work with underrepresented members of the community as a law clerk at the Legal Aid Society of Alameda County in 1973. She was eventually promoted to managing attorney of that organization before moving in 1982 to California Rural Legal Assistance, a statewide legal services program that provides services to farmworkers and the rural poor. She became that organization's director of litigation, advocacy, and training before leaving to become a Deputy Attorney General of California last March.

Among her volunteer activities that aid the disadvantaged, Ms. Gee is a current member of the California Commission on Access to Justice and the Board of Governors and Executive Committee of the California State Bar Foundation, and serves as the Judicial Council's liaison to its Access and Fairness Advisory Committee. In addition, she has been recognized by California Women Lawyers and the National Legal Aid and Defenders Association for her work to improve the funding of civil and criminal remedies for victims of domestic violence. Chief Justice Ronald M. George appointed her to the Judicial Council in 1999. Court News spoke with Ms. Gee about her views on services to the disadvantaged and the unique experience she brings to the council.

In his State of the Judiciary address to the State Bar in September, Chief Justice George stressed the need to reach out to the state's pro per litigants. How would you assess the need for this outreach effort?

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Certainly the pro per issue has been facing the courts for a number of years. The bulk of pro pers are found in the family law, juvenile dependency, tenant/landlord, and consumer arenas. Over the years, the number of pro pers has increased substantially, due in part to the cutbacks in legal services during the 1980s and 1990s. In addition,

the increased costs of private legal service have contributed to the problem by locking out the working poor and the middle class from affordable legal services.

The Chief Justice's leadership in increasing court outreach efforts is very much needed. The courts can help even out the playing field by providing pro per centers that provide advisors, information, and education on how to proceed in pro per. These efforts also assist courts in identifying barriers and local solutions to equal access issues.

Up until this year, you worked for California Rural Legal Assistance (CRLA). What first attracted you to the program, and how does it work?

California Rural Legal Assistance is a statewide legal services program that provides services to farmworkers and the rural poor. There are approximately 16 offices throughout the rural areas of California. I have always felt a strong need to help improve the administration of justice and ensure equal access for what I consider to be disadvantaged and underrepresented groups in our society. And one of the reasons I joined the organization was because I had the opportunity to go back to my hometown, Marysville, to become the directing attorney there. Originally when I went to law school, I went in with the thought that I was part of the "lawyers for social change" of the 1960s and 1970s. I went to law school with the goal to be a legal services attorney. I also worked a number of years with Legal Aid of Alameda County, located in Oakland, before the opportunity arose for me to go back home and work for CRLA.

You are the Judicial Council liaison to its Access and Fairness Advisory Committee. How is it approaching the issue of pro per litigants?

The Access and Fairness Advisory Committee has incorporated economic access issues, which would include pro pers, into its agenda. The committee and the California Commission on Access to Justice have each established a liaison to one another to share information and expertise and to identify issues on which they can collaborate. I am very pleased that the committee has chosen to include this issue in its focus because it has in the past been a neglected area.

The pro per issue cuts across both class and color lines.

You mentioned the California Commission on Access to Justice. What is this commission, and how does it address the issue of pro pers?

The California Commission on Access to Justice is the result of several years of work by various committees of the State Bar, including the Legal Services Committee. The idea behind the creation of the California Commission on Access to Justice was to set up a nonpartisan commission that would bring in representatives from not only the legal community but, more importantly, from the broader society that would include businesses,

The courts can help even out the playing field by providing pro per centers that provide advisors, information, and education on how to proceed in pro per.

civic organizations, religious groups, and social services. We felt that improving equal access and improving the administration of justice should concern not only the legal community but society as a whole. Problems such as domestic violence raise not just legal issues but a whole host of other social issues that have an impact on the community and quality of life. For example, there are statistics that demonstrate the cost of domestic violence to businesses in terms of sick leave, absenteeism, and violence in the workplace.

The commission held an Access to Equal Justice forum in Fresno last year and will do so again in 2001. As a result of that forum, the president of the county bar called on members of bar to increase their pro bono efforts for pro per litigants. We hope to work with other local courts' strategic planning committees to coordinate more forums, as we did in Fresno.

The commission worked with the Chief Justice and the Judicial Council in obtaining new state moneys to address low-income and pro per litigants. The commission is assisting in the development of software for improved intake, advice, referrals, and representation for those in need of legal services. In addition, it is working with the Center for Judicial Education and Research to integrate training and identify best practices for courts to deal with pro per litigants.

What do you see as some of the more promising solutions that are being explored to address the issue of pro pers?

Another strategy that the State Bar and the Judicial Council are looking into is the idea of "unbundling." Unbundling is a concept where attorneys, instead of representing an individual from start to finish on a particular case, will only do pieces of the litigation. For example, sometimes the parties have already agreed on how to divide up their debts and who will be responsible for them, and the only question that remains is the custody of the children. The parties will probably not need an attorney for purposes of litigating their property settlement but will need a lawyer for the custody issue. Unbundling allows a lawyer to represent a party for only that one piece of litigation.

Are there any particular challenges with unbundling that attorneys and the courts need to recognize?

One thing that practitioners have been concerned about is

the threat of malpractice. Unbundling needs to be presented in a way that the attorney and the client realize what the lawyer's ethical duties and roles are in that case. Sometimes there can be a lack of understanding by clients as to exactly what the attorney is going to do for them and which pieces of the litigation they will be responsible for. To address this concern, the State Bar may need to look at revising some specific rules of ethics.

But legal services attorneys have been doing unbundling for years, ever since cutbacks that began in the 1980s. Many times we would send individuals in pro per to the courts because we lacked the resources and lawyers to represent them in every facet of their case. We would prepare an answer or complaint and explain to the client how to file the document and what to do at an appearance. We would basically have a "nonretainer retainer" relationship and would explain to the client that "you are representing yourself in pro per and all we are doing is preparing and drafting the pleading to file in court." We would tell clients to come back to us for further advice should they get discovery that they did not understand. If the case went to trial, at that point we would substitute ourselves back in and represent the client at trial. ■

I have always felt a strong need to help improve the administration of justice and ensure equal access for what I consider to be disadvantaged and underrepresented groups in our society.

Supreme Court Clarifies Rules for Consecutive Sentencing

JUDGE J. RICHARD COUZENS
SUPERIOR COURT OF PLACER
COUNTY

In *People v. Hendrix* (1997) 16 Cal.4th 508, the California Supreme Court held that if current multiple felonies in either a second- or a third-strike prosecution are not committed on the same occasion and do not arise from the same set of operative facts, consecutive sentencing on the multiple counts is mandatory. Conversely, if the current crimes either were committed on the same occasion or arose from the same set of operative facts, the sentencing court retains discretion to sentence concurrently for the new counts.

The court defined “same occasion” as referring to crimes with “at least a close temporal and spatial proximity between the acts underlying the current convictions.” (*People v. Deloza* (1998) 18 Cal.4th 585, 595.) *Deloza* and *Hendrix* held that a sentencing court could properly impose concurrent sentences for robberies of multiple victims occurring essentially simultaneously and at the same location.

People v. Lawrence (2000) 24 Cal.4th 219 is the first Supreme Court decision to explain “same set of operative facts” and the first to address the limits of “same occasion.” The facts of *Lawrence* are instructive if not intriguing. The defendant attempted to shoplift a bottle of brandy from a Pomona market, but a clerk spotted him and gave chase. As the defendant ran through the store’s parking lot, he bowled over an elderly man, scattering his personal effects. As the clerk stopped to assist the elderly man, the defendant continued his escape by running across the street and through a gas station.

About two blocks from the store, the defendant entered the backyard of Vincent Rojas. When Rojas confronted him, the defendant struck Rojas on the elbow with the brandy bottle. Rojas’s fiancée, Elizabeth, joined the fracas, wielding a baseball bat. The defendant hit Elizabeth in the head with the brandy bottle, causing her to fall to the ground in a dazed condition. Rojas, with the assistance of a shovel and his dog, finally managed to tackle the defendant as he made his last attempt at escape. The entire incident, from shoplift to capture, took approximately 15 minutes.

The defendant was convicted of felony petty theft with a prior theft, misdemeanor assault on Rojas, felony assault with a deadly weapon on Elizabeth, and a misdemeanor battery on the elderly man. The defendant had four prior strikes—three separate convictions for robbery and one for attempted

robbery. He appealed the sentence, which was based on the trial court’s conclusion that it had no discretion to impose concurrent sentences. The defendant argued that the series of crimes occurred on the “same occasion” and “arose out of the same operative facts.”

Justice Baxter, in writing the majority opinion, first observed that the facts of *Lawrence* were markedly different from

The removal in terms of time and distance was sufficiently great that the facts failed to meet the “close spatial and temporal proximity” test of *Deloza*.

The majority rejected the application of the “escape rule” urged by the dissent. “We do not believe it was intended that the mandatory consecutive sentencing provision of the three-strikes law not apply to the commission of different crimes perpetrated



those of *Deloza* and *Hendrix*, both of which involved the robbery of multiple victims at the same time and place. *Lawrence*, in contrast, involved two separate locations and two entirely separate groups of victims, several minutes and blocks apart.

against different groups of victims merely because the later crimes occurred while the defendant was still in flight from the initial crime scene.” (*Lawrence*, *supra*, 24 Cal.4th at p. 229.)

The court next addressed the defendant’s contention that his crimes arose “from the same set of operative facts.” The Supreme Court approved the definition of the phrase in *People v. Durant* (1999) 68 Cal.App.4th 1393, as “those facts which prove a criminal or civil defendant’s liability for a particular wrongful act.” (*Id.* at p. 1405.) The Supreme Court said the phrase also means multiple crimes “not sharing common acts or criminal conduct that serves to establish the elements of the current felony offenses of which defendant stands convicted.” (*Lawrence*, *supra*, 24 Cal.4th at p. 233.) The separate criminal episodes involving this defendant, at separate times and places with separate victims, did not arise from the “same set of operative facts.”

The court stated that the factors considered in *Deloza*, *Durant*, and *Lawrence* in determining whether the crimes occurred on the “same occasion” or arose from the “same set of operative facts” were not exclusive. Additional factors might be considered. Could this be a harbinger of things to come? ■



Judge J. Richard Couzens

Judge Couzens is a former member of the Judicial Council and past chair of its Criminal Law Advisory Committee.

Fellowship Program Grows

Expanding this year from 5 to 10 fellowship positions, the Judicial Administration Fellowship Program will again make it possible for judicial fellows with varied backgrounds and experience to assist courts throughout the state.

The Judicial Administration Fellowship Program was developed by the Center for California Studies at California State University, Sacramento (CSUS) to educate and train professionals and leaders in the growing complexities of the court system. Each fellowship position combines a full-time professional field assignment in an office of the courts with a graduate seminar in public administration at CSUS.

“I was able to get a bird’s-eye view of how the judiciary interacts with other branches of government,” says Sanna Singer about her time as a fellow in the Office of Governmental Affairs in Sacramento. “Working with the advocates in my office, I had the opportunity to observe and be involved with the legislative process from the inception of a bill to its enactment. Also this year, I had the opportunity to participate in the judicial branch budget process. My exposure to the intricacies of the legislative and budget processes broadened my understanding and appreciation for how the judicial branch functions as an integral part of our state government.”

This year’s Judicial Administration Fellows will work from October 2000 through August 2001 as professionals providing support to the Supreme Court,

trial and appellate courts, and Judicial Council. The newly selected 2000–2001 fellows come from all over the United States.

Following is a list of the 2000–2001 Judicial Administration Fellows, along with information on their education and assignments.

▼ **Melvin Ashmon** is a graduate of Cumberland School of Law of Samford University in Alabama. Placement: Court of Appeal, Second Appellate District, Office of the Clerk/Administrator.

▼ **Eric Broxmeyer** graduated from Northwestern University with majors in political science and history. Placement: California Supreme Court.

▼ **Chris Lustig** graduated from the University of California at Santa Barbara with degrees in political science and philosophy. Placement: Superior Court of Alameda County, Planning and Research Bureau.

▼ **Maureen O’Neil** is a graduate of the University of California at Berkeley with a degree in political science and an emphasis on public policy. Placement: Administrative Office of the Courts, Information Systems Division, Technology Policy and Planning Unit.

▼ **Erin Emi Oshiro** graduated with a degree in English literature from the University of California at Los Angeles. Placement: Superior Court of Los Angeles County, Planning and Research Unit.

▼ **Guido Persicone** graduated from the University of California at Riverside with a degree in political science. Place-

ment: Superior Court of Santa Clara County.

▼ **Alex Ponce De Leon** graduated from Brown University. Placement: Judicial Council, Office of Governmental Affairs.

▼ **Eve Sandler** is a graduate of Skidmore College with a degree in English literature. Placement: Administrative Office of the Courts, Trial Court Programs Division.

▼ **Shana Wallace** graduated from Amherst College, where she majored in law, jurisprudence, and social thought. Placement: Superior Court of Los Angeles County, Organizational Development and Education Department.

▼ **Pamela Woods** is a graduate of the Howard University College of Law. Placement: Superior Court of Yolo County.

● For more information on the Judicial Administration Fellowship Program, contact June Clark, 916-323-3121, e-mail: june.clark@jud.ca.gov. ■



The 2000–2001 Judicial Administration Fellows were welcomed by Chief Justice Ronald M. George as they began their year-long fellowships assisting courts throughout the state. Four of the 10 fellows who were accepted into this year’s program are shown here with the Chief Justice. (Left to right) Erin Oshiro, Pamela Woods, Chris Lustig, and Alex Ponce de Leon.